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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.3.2006.

CORAM:

THE HONOURABLE MR.JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

TAX CASE (Appeal) Nos.65 AND 66 OF 2003.

Commissioner of Income-tax,
Coimbatore. ... Appellant

Vs.

Elgi Finance Ltd.,
Coimbatore. ... Respondent

Appeals under Section 260A of the Income-tax Act, 1961, against the order of the Income-tax Appellate Tribunal, Madras 'B' Bench, dated 12.12.2002 in ITA No.355 & 356/Mds/2002 for the assessment years 1992-93 & 1993-94 against IT Appeal Nos. 60 & 61/2001 order dt. 30.1.2002 for the assessment year 1991-92, 1992-93 on the file of the Office of the Commissioner of Income Tax (Appeas) I, Coimbatore and PAN/GIR No.AAACE-1992-93 4564-E Order dt.30.3.2001 for the assessment years 1993-94 on the file of the Addl.Commissioner of Income Tax Spl. Range -I, Coimbatore.

For appellant : Mr.J.Nareshkumar

For respondent : Mr.R.Venkataraman, S.C.
for M/s.R.V.Chitra and
Associates

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.JANARTHANA RAJA, J.)

The present Appeals are filed by the Revenue under Section 260A of the Income-tax Act (hereinafter referred to as 'the Act'), against the order passed by the Income-tax Appellate Tribunal, Madras 'B' Bench, dated 12.12.2002 in ITA No.355 & 356/Mds/2002. These appeals came up before this Court and this Court admitted the appeals on 17.10.2003 and formulated the following Substantial

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Question of Law:-

"Whether in the facts and circumstances of the case, the Tribunal was right in treating the reassessment under Section 147, as time barred?"

2. The facts leading to the above question of law are as follows:-

The assessee is a company engaged in the business of finance and leasing. The return filed by the assessee company for the assessment year 1992-93 was initially processed under Section 143(1)(a) on 11.11.1993. Thereafter it was converted into a scrutiny assessment and the said assessment was completed under Section 143(3) by the order of assessment dated 07.03.1994. Later the assessment was rectified under Section 154 by a subsequent order dated 15.04.1996. In respect of assessment year 1993-94, the original assessment under Section 143(3) was completed on 25.03.1996 and the said assessment order also was later rectified under Section 154 by order dated 18.03.1997. While the assessments for the impugned two assessment years 1992-93 and 1993-94 were resting so, the Assessing Officer issued notices under Section 148 dated 17.07.1998 calling for the assessee company to file returns of income for the impugned assessment years in response to the said notice. The reason stated by the Assessing Officer to issue notices under Section 148 was that, depreciation at a higher rate was allowed in favour of the assessee company while completing the original assessments in respect of plant and machinery let out by the assessee company to other lessees, and also granting 100% depreciation on items, on the ground that individual value was less than Rs.5,000/- per piece, in view of proviso to Section 32 of the Income Tax Act, 1961. The Assessing Officer therefore held that the granting of excess depreciation allowance in the original assessments had resulted in escapement of income. It is for the above reason that he had issued notices under Section 148 for the purpose of reopening the assessments to withdraw the excess depreciation allowed to the assessee. The reopened assessments under Section 147 were completed on 30.03.2001 by separate orders for the impugned two assessment years. The assessments were completed under Section 143(3). In the revised assessments the Assessing Officer restricted the claim of depreciation made by the assessee company in its return of income and allowed by the Assessing Officer in the original assessments. The assessee company had leased out commercial vehicles and it had claimed a depreciation of 40% in computing its taxable income on the ground that the commercial vehicles leased out by the assessee company were used by the lessees for commercial purposes only i.e., running on hire. The assessing officer held that the higher rate of 40% was available only to an assessee who itself carried on the business of running vehicles on

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hire and not for anybody else. The business of the assessee company was that of leasing alone. The assessee company by itself had not run the commercial vehicles on hire. Therefore the Assessing Officer held that the assessee company, being a leasing company, cannot claim the higher rate of depreciation at 40% on the commercial vehicles leased out by it. Hence, the Assessing Officer restricted the claim to the normal rate of 25%. In the original assessment, depreciation was granted at the rate of 100% under the proviso to Section 32 on the ground that the cost of individual item was less than Rs.5,000/-. In the revised assessment, the Assessing Officer found that the assessee had leased out those items as a bulk unit and all those items are functionally inter-related and did not have any independent status or identity as plant and machinery and therefore those items need to be considered in bulk, instead of considering as individual item. When those items listed are considered in bulk, obviously the cost of the bulk exceeds Rs.5,000/- and the Assessing Officer restricted the depreciation to the normal rate.

3. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) agreed with the Assessing Officer and confirmed the action of the Assessing Officer in restricting the depreciation to the normal rate. Aggrieved, the assessee filed an appeal before the Income Tax Appellate Tribunal and also raised additional grounds for the said assessment year, which reads as follows:-

> "The Commissioner of Income Tax (Appeals) should have found that the assessment having been reopened more than five years from the end of the relevant assessment years, the original assessment having been completed u/s 143(3), the reopening is barred by limitation, without jurisdiction, against the provisions of law and ab initio void."

The point raised in the additional ground was earlier omitted to be incorporated in the grounds filed before the Tribunal by oversight and the ground being legal in nature, the assessee requested the Tribunal to admit the additional ground on record. The Tribunal also admitted the additional ground raised by the assessee company.

4. The learned counsel appearing for the Revenue submitted that the Assessing Officer was right in reopening the assessment and the Assessing Officer also reopened within the limitation period and hence the order of the reassessment is valid in law. The learned counsel appearing for the assessee submitted that the reopening of the assessment is barred by limitation and also relied on proviso to

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Section 147 of the Income Tax Act.

5. Heard the counsel appearing for both the sides. The law relating to the reassessment has undergone a change from 1st April 1989. The change was brought in by the Direct Tax Laws (Amendment) Act, 1987. Two sets of provisions were available under Section 147 in Clause (a) and Clause (b). This distinction has now been taken away by the Amendment Act. Previously, the line of distinction was a limitation period of four years and the limitation period exceeding four years. The Assessing Officer would reopen a back assessment within a period of four years as long as he had reason to believe in consequence of any information, that income has been under-assessed or income has escaped assessment. In the case of limitation, providing for a period exceeding four years, there should have been a failure on the part of the assessee to disclose fully and truly all material facts leading to the escapement of income. But as a result of the amendment brought with effect from 01.04.1989, the above distinction had been obliterated and the Assessing Officer could reassess the income as long as he had reason to believe that income chargeable had escaped assessment. The new law has inserted a proviso to Section 147 in the following words:

> "Providing that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax had escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

In addition to the time limits provided for under section 149, the law has provided another limitation of four years under the proviso to section 147. As far as the above proviso to section 147 is concerned, the law prescribes a period of four years to initiate reassessment proceedings, unless the income alleged to have escaped assessment was made out as a result of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

6. In the present case, the question is whether the assessee company had disclosed fully and truly all the material facts necessary for the assessments and with particular reference to

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computation of depreciation allowance. The assessee company had filed full set of accounts before the Assessing Officer comprising of profit & loss account, balance sheet and schedules thereto. The assessee company had furnished the details regarding the acquisition of various machineries and assets and the details regarding the leasing out of those machineries and items to other parties. The assessee had also furnished the details of lease rent received out of those lease agreements. The assessee had also furnished the detailed computation of depreciation mentioning therein the written down value of machineries and assets before and after claiming the depreciation allowance for the impugned assessment years. It is a factual finding by the Tribunal that the assessee company had fully and truly disclosed all material facts necessary for working out the quantum of depreciation allowance and completed the assessment accordingly. The Tribunal is right in following the judgment of the learned Single Judge of this Court reported in 241 ITR 672 in the case of Fenner (India) Limited Vs. Deputy Commissioner of Income Tax. In the said judgment, the learned Single Judge considered the scope of proviso to Section 147 of the Income Tax Act in detail and held as follows:

> "The pre-condition for the exercise of the power under section 147 in cases where power is exercised within a period of four years from the end of the relevant assessment year is the belief reasonably entertained by the Assessing Officer that any income chargeable to tax has escaped assessment for that assessment year. However, when the power is invoked after the expiry of the period of four years from the end of the assessment year, a further pre-condition for such exercise is imposed by the proviso namely, that there has been a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. Unless, the condition in the proviso is satisfied, the Assessing Officer does not acquire jurisdiction to initiate any proceeding under section 147 of the Act after the expiry of four years from the end of the assessment year. Thus, in cases where the initiation of the proceedings is beyond the period of four years from the end of the assessment year, the Assessing Officer must necessarily record not only his reasonable belief that income has escaped assessment but also the default or failure committed by the assessee. Failure to do so would vitiate the notice and the entire proceedings. The relevant

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words in the proviso are,

".... unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee....."

Mere escape of income is insufficient to justify the initiation of action after the expiry of four years from the end of the assessment year. Such escapement must be by reason of the failure on the part of the assessee either to file a return referred to in the proviso or to truly and fully disclose the material facts necessary for the assessment.

Whenever a notice is issued by the Assessing Officer beyond a period of four years from the end of the relevant assessment year, such notice being issued without recording the reasons for his belief that income escaped assessment, it cannot be presumed in law that there is also a failure on the part of the assessee to file the returns referred to in the proviso or a failure to fully and truly disclose the material facts. The reasons referred to in the main paragraph of section 147 would, in cases where the proviso is attracted, include reasons referred to in the proviso and it is necessary for the Assessing Officer to record that any one or all the circumstances referred to in the proviso existed before the issue of notice under section 147.

After an assessment has been made, in the normal circumstances, there would be no reason for anyone to doubt that the assessment has been made on the basis of all relevant facts. If the Assessing Officer chooses to entertain the belief that the assessment has been made in the background of the assessee's failure to disclose truly and fully all material facts, it is necessary for him to record that fact, and in the absence of a record to that effect, it cannot be held that a notice issued without recording such a fact is capable of being regarded as a valid notice. As to whether the material facts disclosed by the assessee are full and true is always a question of fact and unless the facts disclosed had been examined in relation to the extent of failure if any on the part of the assessee, it is not possible to form the opinion that there had been a failure on the

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assessee's part to truly and fully disclose the material facts. A notice issued without a record of the Assessing Officer's reasonable belief that there was such failure on the part of the assessee would be indicative of a failure on the part of the Assessing Officer to apply his mind to material facts, and on that ground also the notice issued would be vitiated."

So, when the factual finding is that the assessee company had fully and truly disclosed all material facts necessary for computing the depreciation allowance in the course of the original assessments completed under Section 143(3) itself, the period of limitation applicable to the reopening for these two years would be a period of four years prescribed in the proviso to Section 147 of the Income Tax Act, 1961. For the said two years, notice under Section 148 had been issued after the expiry of four years from the end of the assessment years, 1992-93 and 1993-94. In respect of the assessment year 1992-93, notice if at all necessary, should have been issued on or before 31.03.1997, whereas in fact the notice was issued only on 17.07.1998. For the assessment year 1993-94, notice under Section 148 should have been issued on or before 31.03.1998, whereas in fact, the notice was issued only on 17.07.1998. So, notice under Section 148 for both the assessment years were issued after the expiry of four years from the respective assessment years. Therefore, any notice issued after the expiry of four years from the end of the relevant assessment year, is illegal and is without jurisdiction. Hence the assessment years completed, are barred by limitation and they are liable to be set aside.

7. In view of the above reasoning, the reassessments for the assessment years 1992-93 and 1993-94 are clearly barred by limitation and in view of the same, we answer the question in favour of the assessee. Accordingly, the tax cases are dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Rao/km

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To

1.The Commissioner of Income-tax (Appeals)-I,
Coimbatore.

2. Assistant Registrar,
The Income-tax Appellate Tribunal,
Madras Bench 'B',Rajaji Bhavan, Besant Nagar,
Madras-90.

3.The Addl. Commissioner of Income Tax
Spl. Range -I, Coimbatore.

4.The Commissioner of Income Tax,
Coimbatore.

+2cc to M/s.R.V.Chitra & Associates Sr 12431 & 12432

+2ccs to Mr.N.Muralidharan, Senior Standing Counsel SR 12534 & 12535

JE (CO)
km/17.5.

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